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5   UNITED STATES DISTRICT COURT
                              WESTERN DISTRICT OF WASHINGTON
6   AT SEATTLE

7   TIMELINE, INC.,

8   Plaintiff,

9   No. C05-1013JLR
            v.
10   ORDER ON DISCOVERY MOTIONS
     PROCLARITY CORPORATION, et al.,
11
                     Defendants.
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14   This matter comes before the court on two related motions: (1) Microsoft Corporation's

15   Motion for Protective Order (Dkt. # 288); and (2) Timeline, Inc.'s Motion to Compel Deposition

16   Regarding Source Code or to Exclude Evidence or Questioning Regarding Same (Dkt. # 290). Both

17   motions concern Timeline's Fifth Notice of Deposition to Microsoft Pursuant to Rule 30(b)(6).

18   Having reviewed the materials submitted by the parties and finding that oral argument is not

19   necessary to decide these matters, the court DENIES Microsoft's motion for a protective order and

20   GRANTS Timeline's motion to compel for the reasons stated below.

21   **Discussion**

22   Timeline's fifth 30(b)(6) deposition notice to Microsoft requests that Microsoft designate one

23   or more persons to testify regarding the location of certain source code within Analysis Services 2005,

24   a Microsoft product. Although Microsoft raised a number of objections to this notice, Microsoft

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1   indicated that it would present a witness to testify at a time to be agreed upon by counsel, subject to

2   its objections.

3   At the request of both sides, the court issued an order extending the discovery deadline to June

4   15th for certain depositions, including this deposition (Dkt. # 284). However, Microsoft informed

5   Timeline on June 14th that it would not produce a witness for the deposition and filed a motion for a

6   protective order the same day. On June 15th, Timeline filed its own motion to compel the deposition.

7   Microsoft argues that compliance with the deposition notice would be unduly burdensome.

8   Microsoft states that Analysis Services 2005 contains approximately two million lines of source code

9   and asserts that a team of sixty programmers and developers would need to spend six months to

10 prepare for the deposition. Microsoft suggests that Timeline should rely on its expert to locate the

11 source code that relates to the functions and features specified in the deposition notice, noting that

12 Timeline has had the source code since February 2007.

13   The court is not persuaded by Microsoft's arguments. Timeline is requesting that Microsoft

14 produce one or more witnesses to testify regarding the location of source code in Analysis Services

15 2005 that relates to a specified list of functions and features. Analysis Services 2005 is Microsoft's

16 product. It is not unreasonable or unduly burdensome to expect Microsoft to produce one or more

17 witnesses who are knowledgeable about the location of source code that relates to specified functions

18 and features in its own product.

19   Rule 30(b)(6) requires Microsoft to designate one or more witnesses to "testify as to matters

20 known or reasonably available to the organization." Although the designated witness or witnesses

21 must make thorough efforts to prepare for the deposition, the court obviously does not expect

22 Microsoft to have sixty employees devote six months to this matter. The court takes Timeline at its

23 word that it would be "satisfied with a witness who could generally point to modules within the code

24 which contain certain features" (Dkt. # 322 at 4). If the location of the specified source code cannot

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1 be identified by Microsoft's designee(s) despite reasonably thorough and good faith preparation

2 efforts, the designated witness or witnesses may testify why that is so at the deposition.

3   **Conclusion**

4   Consistent with the discussion above, the court GRANTS Timeline's motion to compel and

5 DENIES Microsoft's motion for a protective order. Microsoft is ORDERED to produce one or more

6 witnesses to testify to the topics listed in Plaintiff's Fifth Notice of Deposition to Microsoft Pursuant

7 to Rule 30(b)(6), at a time and place to be agreed upon by counsel, but no later than August 24, 2007.

8   Dated: July 31, 2007

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10   s/James L. Robart
                                           JAMES L. ROBART
11   United States District Judge

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